

Draft text of

## **DEFAMATION BILL 2006**

### **ARRANGEMENT OF SECTIONS**

#### **PART 1**

##### **PRELIMINARY AND GENERAL**

###### **Section**

1. Short title and commencement.
2. Definitions.
3. Saver.
4. Repeal.

#### **PART 2**

##### **DEFAMATION**

5. Defamation.
6. Amendment of certain enactments.
7. Verifying affidavit.
8. Imputation.
9. Defamation of class of persons.
10. Multiple publication.
11. Defamation of a body corporate.
12. Appeals in defamation actions.
13. Meaning.

#### **PART 3**

##### **DEFENCES**

14. Truth.
15. Absolute privilege.
16. Qualified privilege.
17. Loss of defence of qualified privilege.
18. Honest opinion
19. Distinguishing between allegations of fact and opinion.
20. Offer to make amends.
21. Effect of offer to make amends.
22. Apology.
23. Consent to publish.
24. Fair and reasonable publication on a matter of public importance.

25. Innocent publication.

## PART 4

### REMEDIES

26. Declaratory order.

27. Lodgment of money in settlement of action.

28. Correction order.

29. Damages.

30. Aggravated and punitive damages.

31. Dismissal for want of prosecution.

32. Order prohibiting the publication of a defamatory statement.

33. Summary disposal of action.

## PART 5

### CRIMINAL LIABILITY

34. Abolition of certain common law offences.

35. Publication of gravely harmful statements.

36. Seizure of copies of false statements.

## PART 6

### MISCELLANEOUS

37. Limitation of actions

38. Survival of cause of action on death

39. Agreements for indemnity.

40. Jurisdiction of courts.

41. Malicious falsehood.

42. Evidence of acquittal or conviction.

43. Press Council.

## SCHEDULE 1

### STATEMENTS HAVING QUALIFIED PRIVILEGE

#### PART 1

##### STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

#### PART 2

##### STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

## SCHEDULE 2

### MINIMUM REQUIREMENTS IN RELATION TO PRESS COUNCIL

#### ACTS REFERRED TO

Arbitration (International Commercial) Act 1998	1998, No. 14
Arbitration Act 1954	1954, No. 26
Arbitration Act 1980	1980, No. 7
Civil Liability Act 1961	1961, No. 41
Commissions of Investigation Act 2004	2004, No. 23
Committees of the Houses of the Oireachtas (Privilege and Procedure) Act 1976	1976, No. 10
Courts (Supplemental Provisions) Act 1961	1961, No. 39
Courts Act 1991	1991, No. 20
Courts of Justice Act 1924	1924, No. 10
Defamation Act 1961	1961, No. 40
Irish Takeover Panel Act 1997	1997, No. 5
Statute of Limitations 1957	1957, No. 6
Tribunals of Inquiry (Evidence) Acts 1921 to 2004	

draft text of  
**DEFAMATION BILL 2006**

**BILL**

**entitled**

AN ACT TO REVISE IN PART THE LAW OF DEFAMATION; TO REPEAL THE DEFAMATION ACT 1961; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

***Short title and commencement.***

1.—(1) This Act may be cited as the Defamation Act 2006.

(2) This Act shall come into operation on such day or days as the Minister may appoint, by order or orders, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

***Definitions.***

2.—In this Act—

“Act of 1957” means the Statute of Limitations 1957;

“Act of 1961” means the Defamation Act 1961;

“cause of action” means a cause of action for defamation;

“correction order” has the meaning assigned to it by *section 28*;

“declaratory order” has the meaning assigned to it by *section 26*;

“defamation” shall be construed in accordance with *section 5(2)*;

“defamation action” means—

(a) an action for damages for defamation, or

(b) an application for a declaratory order,

whether or not a claim for other relief under this Act is made;

“defamatory statement” means a statement that tends to injure a person’s reputation in the eyes of reasonable members of society, and “defamatory” shall be construed accordingly;

“defence of absolute privilege” has the meaning assigned to it by *section 15*;

“defence of qualified privilege” has the meaning assigned to it by *section 16*;

“defence of truth” has the meaning assigned to it by *section 14*;

“electronic communication” includes a communication of information in the form of data, text, images or sound (or any combination of these) by means of guided or unguided electromagnetic energy, or both;

“Minister” means the Minister for Justice, Equality and Law Reform;

“periodical” means any newspaper, magazine, journal or other publication that is printed, published or issued, or that circulates, in the State at regular or substantially regular intervals and includes any version thereof published on the internet or by other electronic means;

“plaintiff” includes a defendant counterclaiming in respect of a statement that is alleged to be defamatory;

“Press Council” has the meaning assigned to it by *section 43*;

“Press Ombudsman” has the meaning assigned to it by *paragraph 8 of Schedule 2*;

“qualified offer” has the meaning assigned to it by *section 20*;

“special damages” has the meaning assigned to it by *section 29(7)*;

“statement” includes—

- (a) a statement made orally or in writing,
- (b) visual images, sounds, gestures and any other method of signifying meaning,
- (c) a statement—
  - (i) broadcast on the radio or television, or
  - (ii) published on the internet, and
- (d) an electronic communication.

“summary relief” means, in relation to a defamation action -

- (a) a correction order, or
- (b) an order prohibiting further publication of the statement to which the action relates.

***Saver.***

**3.**—(1) A provision of this Act shall not affect causes of action accruing before its commencement.

(2) A provision of this Act shall not affect the operation of the general law in relation to defamation, in force immediately before its commencement, except to the extent that that provision provides otherwise (whether expressly or by necessary implication).

***Repeal.***

**4.**—The Act of 1961 is repealed.

PART 2  
DEFAMATION

***Defamation.***

**5.**—(1) The tort of libel and the tort of slander—

(a) shall cease to be so described, and

(b) shall, instead, be collectively described, and are referred to in this Act, as the “tort of defamation”.

(2) The tort of defamation consists of the publication, by any means, of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person), and “defamation” shall be construed accordingly.

(3) A defamatory statement concerns a person if it could reasonably be understood as referring to him or her.

(4) There shall be no publication for the purposes of the tort of defamation if the defamatory statement concerned is published to the person to whom it relates and to a person other than the person to whom it relates in circumstances where—

(a) it was not intended that the statement would be published to the second-mentioned person, and

(b) it was not reasonably foreseeable that publication of the statement to the first-mentioned person would result in its being published to the second-mentioned person.

(5) The tort of defamation is actionable without proof of special damage.

***Amendment of certain enactments.***

**6.**—(1) Section 77 of the Courts of Justice Act 1924 is amended, in paragraph (i) (inserted by section 4(a) of the Courts Act 1991), by the substitution of “the tort of defamation” for the words “slander, libel”.

(2) The Civil Liability Act 1961 is amended—

(a) in section 11, by—

(i) the substitution, in subsection (5), of “defamatory statement” for the words “libel or slander”, and

(ii) the insertion of the following subsection:

“(7) In this section ‘defamatory statement’ has the same meaning as it has in the *Defamation Act 2006*.”, and

(b) in section 14(6), by the substitution of “a defamation action under the *Defamation Act 2006*” for the words “an action for libel or slander”.

***Verifying affidavit.***

**7.**—(1) Where the plaintiff in a defamation action—

(a) serves on the defendant any pleading containing assertions or allegations of fact, or

(b) provides further information to the defendant,

the plaintiff (or in the case of a defamation action brought on behalf of an infant or person of unsound mind by a next friend or a committee of the infant or person, the next friend or committee) shall swear an affidavit verifying those assertions or allegations, or that further information.

(2) Where the defendant in a defamation action—

(a) serves on the plaintiff any pleading containing assertions or allegations of fact, or

(b) provides further information to the plaintiff,

the defendant shall swear an affidavit verifying those assertions or allegations, or that further information.

(3) Where a defamation action is brought on behalf of an infant or a person of unsound mind by a next friend or a committee of the infant or person, an affidavit to which *subsection (1)* applies sworn by the next friend or committee concerned shall, in respect of assertions, allegations or further information, of which he or she does not have personal knowledge, state that he or she honestly believes the assertions, allegations or further information, to be true.

(4) Where the plaintiff or defendant in a defamation action is a body corporate, the person swearing the affidavit on behalf of the body corporate under *subsection (1)* or (2), as the case may be, shall, in respect of assertions, allegations or further information, of which he or she does not have personal knowledge, state that he or she honestly believes the assertions, allegations or further information to be true.

(5) An affidavit under this section shall be sworn and filed in court not later than 2 months after the service of the pleading concerned or the provision of the further information concerned, as the case may be, or such longer period as the court may direct or the parties may agree.

(6) If a person makes a statement in an affidavit under this section—

(a) that is false or misleading in any material respect, and

(b) that he or she knows to be false or misleading,

he or she shall be guilty of an offence.

(7) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000, or imprisonment for a term not exceeding 6 months or to both, or

(b) on conviction on indictment, to a fine not exceeding €50,000, or imprisonment for a term not exceeding 5 years, or to both.

(8) An affidavit sworn under this section shall include a statement by the deponent that he or she is aware that the making of a statement by him or her in the affidavit that is false or misleading in any material respect and that he or she knows to be false or misleading is an offence.

(9) In a defamation action—

(a) the defendant shall, unless the court otherwise directs, be entitled to cross examine the plaintiff in relation to any statement made by the plaintiff in the affidavit sworn by him or her under this section, and

(b) the plaintiff shall, unless the court otherwise directs, be entitled to cross examine the defendant in relation to any statement made by the defendant in the affidavit sworn by him or her under this section.

(10) Where a plaintiff or a defendant fails to comply with this section, the court may make such order as it considers just and equitable, including—

(a) in the case of such a failure on the part of the plaintiff, an order dismissing the defamation action, and

(b) in the case of such a failure by the defendant, judgment in favour of the plaintiff,

and may give such directions in relation to an order so made as the court considers necessary or expedient.

(11) The reference to court in *subsection (5)* shall—

(a) in the case of a defamation action brought in the High Court, include a reference to the Master of the High Court, and

(b) in the case of a defamation action brought in the Circuit Court, include a reference to the county registrar for the county in which the proceedings concerned were issued.

(12)(a) References in this section to plaintiff shall, in the case of a plaintiff who is deceased, be construed as references to his or her personal representative.

(b) References in this section to defendant shall, in the case of a defendant who is deceased, be construed as references to his or her personal representative.

(13) This section does not apply to an application for a declaratory order.

***Imputation.***

**8.**—A person has one cause of action only in respect of the publication of a defamatory statement concerning the person even if more than one defamatory imputation in respect of that person is borne by that statement.

***Defamation of class of persons.***

**9.**—Where a person publishes a defamatory statement concerning a class of persons, a member of that class shall have a cause of action under this Act against that person if -

(a) by reason of the number of persons who are members of that class, or

(b) by virtue of the circumstances in which the statement is published,

the statement could reasonably be understood to refer, in particular, to the member concerned.



***Multiple publication.***

**10.**—(1) Subject to *subsection (2)*, a person has one cause of action only in respect of a multiple publication.

(2) A court may grant leave to a person to bring more than one defamation action in respect of a multiple publication where it considers that the interests of justice so require.

(3) In this section “multiple publication” means publication by a person of the same defamatory statement to 2 or more persons (other than the person in respect of whom the statement is made) whether contemporaneously or not.

***Defamation of a body corporate.***

**11.**—The provisions of this Act apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action under this Act in respect of a statement concerning it that it claims is defamatory whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement.

***Appeals in defamation actions.***

**12.**—(1) Upon the hearing of an appeal from a decision of the High Court in a defamation action, the Supreme Court may, in addition to any other order that it deems appropriate to make, substitute for any amount of damages awarded to the plaintiff by the High Court such amount as it considers appropriate.

(2) In this section “decision” includes a judgment entered pursuant to the verdict of a jury.

***Meaning.***

**13.**—(1) The court, in a defamation action, may give a ruling -

(a) as to whether the statement in respect of which the action was brought is reasonably capable of bearing the imputation pleaded by the plaintiff, and

(b) (where the court rules that that statement is reasonably capable of bearing that imputation) as to whether that imputation is reasonably capable of bearing a defamatory meaning,

upon an application being made to it in that behalf.

(2) Where a court rules under *subsection (1)* that—

(a) the statement in respect of which the action was brought is not reasonably capable of bearing the imputation pleaded by the plaintiff, or

(b) that any imputation so pleaded is not reasonably capable of bearing a defamatory meaning,

it shall dismiss the action in so far only as it relates to the imputation concerned.

(3) An application under this section shall be brought by notice of motion and shall be determined, in the case of a defamation action brought in the High Court, in the absence of the jury.

(4) An application under this section may be brought at any time after the bringing of the defamation action concerned including during the course of the trial of the action.

PART 3  
DEFENCES

***Truth.***

**14.**—(1) It shall be a defence (to be known and in this Act referred to as the “the defence of truth”) to a defamation action for the defendant to prove that the statement in respect of which the action was brought is true in all material respects.

(2) In a defamation action in respect of a statement containing 2 or more distinct allegations against the plaintiff, the defence of truth shall not fail by reason only of the truth of every allegation not being proved, if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining allegations.

***Absolute privilege.***

**15.**—(1) It shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought would, if it had been made immediately before the commencement of this Act in accordance with section 1(2), have been considered under the law in force immediately before such commencement as having been made on an occasion of absolute privilege.

(2) Without prejudice to the generality of subsection (1), it shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought was—

- (a) made in either House of the Oireachtas by a member of either House of the Oireachtas,
- (b) contained in a report of a statement, to which paragraph (a) applies, produced by or on the authority of either such House,
- (c) made in the European Parliament by a member of that Parliament,
- (d) contained in a report of a statement, to which paragraph (c) applies, produced by or on the authority of the European Parliament,
- (e) contained in a judgment of a court established by law in the State,
- (f) made by a judge, or other person, performing a judicial function,
- (g) made by a party, witness, legal representative or juror in the course of proceedings presided over by a judge, or other person, performing a judicial function,
- (h) made in the course of proceedings involving the exercise of limited functions and powers of a judicial nature in accordance with Article 37 of the Constitution, where the statement is connected with those proceedings,
- (i) a fair and accurate report of proceedings publicly heard before, or decision made public by, any court—
  - (i) established by law in the State, or
  - (ii) established under the law of Northern Ireland,

- (j) a fair and accurate report of proceedings publicly heard before, or decision made public by, any court or arbitral tribunal established by an international agreement to which the State is a party including the Court of Justice of the European Communities, the Court of First Instance of the European Communities, the European Court of Human Rights and the International Court of Justice,
- (k) made in proceedings before a committee of either House of the Oireachtas,
- (l) made in proceedings before a committee of the European Parliament,
- (m) made in the course of proceedings before a tribunal established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2004, where the statement is connected with those proceedings,
- (n) contained in a report of any such tribunal,
- (o) made in the course of proceedings before a commission of investigation established under the Commissions of Investigation Act 2004, where the statement is connected with those proceedings,
- (p) contained in a report of any such commission,
- (q) made in the course of an inquest by a coroner or contained in a decision made or verdict given at or during such inquest,
- (r) made in the course of an inquiry conducted on the authority of a Minister of the Government, the Government, the Oireachtas, either House of the Oireachtas or a court established under the Constitution,
- (s) made in the course of an inquiry conducted in Northern Ireland on the authority of a person or body corresponding to a person or body referred to in *paragraph (r)*,
- (t) contained in a report of an inquiry referred to in *paragraph (r)* or (s),
- (u) made pursuant to and in accordance with an order of a court established by law in the State.

(3) Section 2 of the Committees of the Houses of the Oireachtas (Privilege and Procedure) Act 1976 is amended by the insertion of the following subsection:

“(3) In this section ‘utterance’ includes a statement within the meaning of the *Defamation Act 2006*;”.

(4) Section 12 of the Arbitration (International Commercial) Act 1998 shall apply in relation to proceedings before an arbitral tribunal to which the Arbitration Act 1954 or the Arbitration Act 1980 applies.

(5) A defence under this section shall be known as, and is referred to in this Act, as the “defence of absolute privilege”.

***Qualified privilege.***

**16.—**(1) Subject to *section 15*, it shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought would, if it

had been made immediately before the commencement of this Act in accordance with *section 1(2)*, have been considered under the law (other than the Act of 1961) in force immediately before such commencement as having been made on an occasion of qualified privilege.

(2) Without prejudice to the generality of *subsection (1)*, it shall, subject to *section 17*, be a defence to a defamation action for the defendant to prove that—

- (a) the statement was published to a person or persons who—
  - (i) had a duty to receive, or interest in receiving, the information contained in the statement, or
  - (ii) the defendant believed upon reasonable grounds that the said person or persons had such a duty or interest, and
- (b) the defendant had a corresponding duty to communicate, or interest in communicating, the information to such person or persons.

(3) Without prejudice to the generality of *subsection (1)* it shall, subject to *section 17*, be a defence to a defamation action for the defendant to prove that the statement to which the action relates is contained in a report specified in *Schedule 1*, unless in the case of a report or other matter referred to in *Part 2* of that Schedule, it is proved that the defendant was requested by the plaintiff to publish in the same medium of communication in which he or she published the statement concerned, a reasonable statement by way of explanation or a contradiction, and has refused or failed to do so or has done so in a manner that is not adequate or reasonable having regard to all the circumstances.

(4) Nothing in *subsection (3)* shall be construed as—

- (a) protecting the publication of any statement the publication of which is prohibited by law, or of any statement that is not of public concern and the publication of which is not for the public benefit, or
- (b) limiting or abridging any privilege subsisting apart from *subsection (3)*.

(5) A defence under this section shall be known, and is referred to in this Act, as the “defence of qualified privilege”.

(6) In this section—

“duty” means a legal, moral or social duty.

“interest” means a legal, moral or social interest.

***Loss of defence of qualified privilege.***

**17.—**(1) In a defamation action, the defence of qualified privilege shall fail if, in relation to the publication of the statement in respect of which the action was brought, the plaintiff proves that—

- (a) the defendant did not believe the statement to be true,
- (b) the defendant acted in bad faith or out of spite, ill will or improper motive,
- (c) the statement bore no relation to the purpose of the defence, or

(d) the manner and extent of publication of the statement exceeded what was reasonably sufficient in all the circumstances.

(2) The defence of qualified privilege shall not fail by reason only of the publication of the statement concerned to a person other than an interested person if it is proved that the statement was published to the person because the publisher mistook him or her for an interested person.

(3) Where a defamation action is brought against more than one defendant, the failure of the defence of qualified privilege in relation to one of the defendants by virtue of the application of *subsection (1)* shall not cause the failure of the defence in relation to another of the defendants unless that other defendant was vicariously liable for such acts or omissions of the first-mentioned defendant as gave rise to the cause of action concerned.

(4) Section 11(4) of the Civil Liability Act 1961 is repealed.

(5) In this section “interested person” means, in relation to a statement, a person who, under *section 16(2)(a)*, had a duty or interest in receiving the information contained in the statement.

### ***Honest opinion***

**18.**—(1) It shall be a defence (to be known, and in this Act referred to, as the “defence of honest opinion”) to a defamation action for the defendant to prove that, in the case of a statement consisting of an opinion, the opinion was honestly held.

(2) Subject to *subsection (3)*, an opinion is honestly held, for the purposes of this section, if—

(a) at the time of the publication of the statement, the defendant believed in the truth of the opinion or, where the defendant is not the author of the opinion, believed that the author believed it to be true,

(b)(i) the opinion was based on allegations of fact—

- (I) specified in the statement containing the opinion, or
- (II) referred to in that statement, that were known, or might reasonably be expected to have been known, by the persons to whom the statement was published, or

(ii) the opinion was based on allegations of fact to which—

- (I) the defence of absolute privilege, or
- (II) the defence of qualified privilege in accordance with *section 16(2)*,

would apply if a defamation action were brought in respect of such allegations, and

(c) the opinion related to a matter of public importance.

(3)(a) Where a defendant pleads the defence of honest opinion and the opinion concerned is based on allegations of fact to which *subsection (2)(b)(i)* applies, that defence shall fail unless the defendant proves the truth of those

allegations, but the defence shall not fail by reason only of the defendant's failing to prove the truth of all of those allegations if the opinion is honest opinion having regard to the allegations of fact the truth of which is proved.

(b) Where a defendant pleads the defence of honest opinion and the opinion concerned is based on allegations of fact to which *subsection (2)(b)(ii)* applies, that defence shall not fail by reason only of the defendant's failing to prove the truth of those allegations unless—

(i) the opinion could reasonably be understood as implying that those allegations are true, or

(ii) the allegations are untrue and, at the time of the publication of the opinion, the defendant knew or ought reasonably to have known that those allegations were untrue.

(2) Where a defamatory statement consisting of an opinion is published jointly by a person ("first-mentioned person") and another person ("joint publisher"), the first-mentioned person shall not fail in pleading the defence of honest opinion in a subsequent defamation action brought in respect of that statement by reason only of that opinion not being honestly held by the joint publisher, unless the first-mentioned person was at the time of publication vicariously liable for the acts or omissions, from which the cause of action in respect of that statement accrued, of the joint publisher.

***Distinguishing between allegations of fact and opinion.***

**19.**—The matters to which the court in a defamation action shall have regard, for the purposes of distinguishing between a statement consisting of allegations of fact and a statement consisting of opinion, shall include the following:

(a) the extent to which the statement is capable of being proved;

(b) the extent to which the statement was made in circumstances in which it was likely to have been reasonably understood as a statement of opinion rather than a statement consisting of an allegation of fact; and

(c) the words used in the statement and the extent to which the statement was subject to a qualification or a disclaimer or was accompanied by cautionary words.

***Offer to make amends.***

**20.**—(1) A person who has published a statement that is alleged to be defamatory of another person may make an offer to make amends.

(2) An offer to make amends shall—

(a) be in writing,

(b) state that it is an offer to make amends for the purposes of this section, and

(c) state whether the offer is in respect of the entire of the statement or an offer (in this Act referred to as a "qualified offer") in respect of—

(i) part only of the statement, or

(ii) a particular defamatory meaning only.

(3) An offer to make amends shall not be made after the delivery of the defence in the defamation action concerned.

(4) An offer to make amends may be withdrawn before it is accepted and where such an offer is withdrawn a new offer to make amends may be made.

(5) In this section “an offer to make amends” means an offer—

- (a) to make a suitable correction of the statement concerned and a sufficient apology to the person to whom the statement refers or is alleged to refer,
- (b) to publish that correction and apology in such manner as is reasonable and practicable in the circumstances, and
- (c) to pay to the person such sum in compensation or damages (if any), and such costs, as may be agreed by them or as may be determined to be payable,

whether or not it is accompanied by any other offer to perform an act other than an act referred to in *paragraph (a), (b) or (c)*.

***Effect of offer to make amends.***

**21.—**(1) If an offer to make amends under section 20 is accepted the following provisions shall apply:

- (a) if the parties agree as to the measures that should be taken by the person who made the offer to ensure compliance by him or her with the terms of the offer, the High Court or, where a defamation action has already been brought, the court in which it was brought may, upon the application of the person to whom the offer was made, direct the party who made the offer to take those measures;
- (b) if the parties do not so agree, the person who made the offer may, with the leave of the High Court or, where a defamation action has already been brought, the court in which it was brought, make a correction and apology by means of a statement before the court in such terms as may be approved by the court and give an undertaking as to the manner of their publication;
- (c) if the parties do not agree as to the damages or costs that should be paid by the person who made the offer, those matters shall be determined by the High Court or, where a defamation action has already been brought, the court in which it was brought, and the court shall for those purposes have all such powers as it would have if it were determining damages or costs in a defamation action, and in making a determination under this paragraph it shall take into account the adequacy of any measures already taken to ensure compliance with the terms of the offer by the person who made the offer;
- (d) no defamation action shall be brought or, if already brought, proceeded with against another person in respect of the statement to which the offer

to make amends applies unless the court considers that in all the circumstances of the case it is just and proper to so do.

(2) Subject to *subsection (3)*, it shall be a defence to a defamation action for a person to prove that he or she made an offer to make amends under *section 20* and that it was not accepted, unless the plaintiff proves that the defendant knew or ought reasonably to have known at the time of making the statement to which the offer relates that—

- (a) it referred to the plaintiff or was likely to be understood as referring to the plaintiff, and
- (b) it was false and defamatory of the plaintiff.

(3) Where the defendant in a defamation action made a qualified offer only, *subsection (2)* shall apply in relation to that part only of the action that relates to the part of the statement or the meaning, as the case may be, to which the qualified offer relates.

(4) A person who makes an offer to make amends is not required to plead it as a defence in a defamation action.

(5) If a defendant in a defamation action pleads the defence under this section, he or she shall not be entitled to plead any other defence in the action, and if the defence is pleaded in respect of a qualified offer only he or she shall not be entitled to plead any other defence in respect of that part of the action that relates to the part of the statement or the meaning, as the case may be, to which the qualified offer relates.

***Apology.***

**22.—**(1) In a defamation action the defendant may give evidence, in mitigation of damage, that he or she made or offered an apology to the plaintiff in respect of the statement to which the action relates, either—

- (a) before the bringing of the action, or
- (b) as soon as practicable thereafter, in circumstances where the action was commenced before there was an opportunity to make or offer an apology.

(2) In a defamation action, a defendant who intends to give evidence to which *subsection (1)* applies shall, at the time of the filing or delivery of the defence to the action, notify the plaintiff in writing of his or her intention to give such evidence.

(3) In a defamation action, an apology made by or on behalf of a defendant in respect of a statement to which the action relates—

- (a) does not constitute an express or implied admission of liability by that defendant, and
- (b) is not relevant to the determination of liability in the action.

(4) Evidence of an apology made by or on behalf of a person in respect of a statement to which the action relates is not admissible in any civil proceedings as evidence of liability of the defendant.



***Consent to publish.***

**23.**—In a defamation action it shall be a defence, to be known as the “defence of consent”, for a person to prove that the plaintiff consented to the publication of the statement in respect of which the action was brought.

***Fair and reasonable publication on a matter of public importance.***

**24.**—(1) Subject to subsection (4), it shall be a defence (to be known, and in this section referred to, as “the defence of fair and reasonable publication”) to a defamation action for the defendant to prove that the statement in respect of which the action was brought was published—

(a) in good faith, and

(b) in the course of, or for the purposes of, the discussion of a subject of public importance, the discussion of which was for the public benefit,

and in all the circumstances of the case, it was fair and reasonable to publish the statement.

(2) For the purposes of this section, the court shall, in determining whether it was fair and reasonable to publish the statement concerned, take into account such matters as the court considers relevant including any or all of the following:

(a) the extent to which the statement concerned refers to the performance by the person of his or her public functions;

(b) the seriousness of any allegations made in the statement;

(c) the context and content (including the language used) of the statement;

(d) the extent to which the statement drew a distinction between suspicions, allegations and facts;

(e) the extent to which there were exceptional circumstances that necessitated the publication of the statement on the date of publication;

(f) in the case of a statement published in a periodical, the extent to which the publisher of the periodical—

(i) adhered to the code of standards of the Press Council or to standards equivalent to those specified in that code of standards, and

(ii) abided by decisions of the Press Ombudsman and determinations of the Press Council;

(g) the extent to which the plaintiff’s version of events was represented in the publication concerned and, if not so represented, the extent to which a reasonable attempt was made by the publisher to obtain and publish a response from that person;

(h) any other means taken to verify the assertions and allegations concerning the plaintiff in the statement.

(3) The failure or refusal of a plaintiff to respond to attempts by or on behalf of the defendant, to elicit the plaintiff’s version of events, shall not—

(a) constitute or imply consent to the publication of the statement, or

- (b) entitle the court to draw an inference if, in the particular circumstances of the case, the court considers that the plaintiff was reasonable in withholding any response or in believing that a denial or refutation by the plaintiff of a defamatory statement would itself be unfairly used or published.

(4) The defence of fair and reasonable publication shall fail unless, in relation to the publication of the statement in respect of which the action was brought, the defendant proves that—

- (a) at the time of publication he or she believed the statement to be true,
- (b) he or she did not act in bad faith or out of spite, ill will or other improper motive,
- (c) the statement bore a relation to the purpose of the defence, and
- (d) the manner and extent of publication of the statement did not exceed that which was reasonably sufficient in all of the circumstances.

(5) In this section—

“court” means, in relation to a defamation action brought in the High Court, the jury, if the High Court is sitting with a jury;

“defamation action” does not include an application for a declaratory order.

***Innocent publication.***

**25.—**(1) It shall be a defence (to be known as the “defence of innocent publication”) to a defamation action for the defendant to prove that—

- (a) he or she was not the author, editor or publisher of the statement to which the action relates,
- (b) he or she took reasonable care in relation to its publication, and
- (c) he or she did not know, and had no reason to believe, that what he or she did caused or contributed to the publication of a statement that would give rise to a cause of action in defamation.

(2) A person shall not, for the purposes of this section, be considered to be the author, editor or publisher of a statement if—

- (a) in relation to printed material containing the statement, he or she was responsible for the printing, production, distribution or selling only of the printed material,
- (b) in relation to a film or sound recording containing the statement, he or she was responsible for the processing, copying, distribution, exhibition or selling only of the film or sound recording,
- (c) in relation to any electronic medium on which the statement is recorded or stored, he or she was responsible for the processing, copying, distribution or selling only of the electronic medium or was responsible for the operation or provision only of any equipment, system or service

by means of which the statement would be capable of being retrieved, copied, distributed or made available.

(3) The court shall, for the purposes of determining whether a person took reasonable care, or had reason to believe that what he or she did caused or contributed to the publication of a defamatory statement, have regard to—

- (a) the extent of the person's responsibility for the content of the statement or the decision to publish it,
- (b) the nature or circumstances of the publication, and
- (c) the previous conduct or character of the person.

#### PART 4 REMEDIES

##### ***Declaratory order.***

**26.**—(1) A person who claims to be the subject of a statement that he or she alleges is defamatory may apply to the High Court for an order (in this Act referred to as a “declaratory order”) that the statement is false and defamatory of him or her.

(2) Upon an application under this section, the court shall make a declaratory order if it is satisfied that—

- (a) the statement is defamatory of the applicant and the respondent has no defence to the application,
- (b) the applicant requested the respondent to make an apology, correction or retraction in relation to that statement, and
- (c) the respondent failed or refused to accede to that request.

(3) Where an application is made under this section, the applicant shall not be entitled to bring any other proceedings in respect of any cause of action arising out of the statement to which the application relates.

(4) An application under this section shall be heard by a judge sitting alone.

(5) An application under this section shall be brought by motion on notice to the respondent grounded on affidavit.

(6) Where a court makes a declaratory order, it may, in addition, make an order under *section 28* or *32*, upon an application by the applicant in that behalf.

(7) The court may, for the purposes of making a determination in relation to an application under this section in an expeditious manner, give directions in relation to the delivery of pleadings and the time and manner of trial of any issues raised in the course of such an application.

(8) No order in relation to damages shall be made upon an application under this section.

***Lodgment of money in settlement of action.***

**27.**—(1) In an action for damages for defamation the defendant may, upon giving notice in writing to the plaintiff, pay a sum of money into court in satisfaction of the action when filing his or her defence to the action.

(2) A payment to which this section applies shall be deemed to be a payment under such rule of court for the time being in force as provides for the payment into court of a sum of money in satisfaction of an action for damages for defamation.

(3) Where a payment to which this section applies is made, the plaintiff in the action concerned may accept the payment—

- (a) in accordance with the rule referred to in subsection (2), or
- (b) inform the court in which the action was brought, on notice to the defendant, of his or her acceptance of the payment in full settlement of the action.

(4) The defendant shall not be required to admit liability in an action for damages for defamation when making a payment to which this section applies.

***Correction order.***

**28.**—(1) Where, in a defamation action, there is a finding that the statement in respect of which the action was brought was defamatory and the defendant has no defence to the action, the court may, upon the application of the plaintiff, make an order (in this Act referred to as a “correction order”) directing the defendant to publish a correction of the defamatory statement.

(2) Without prejudice to the generality of subsection (1), a correction order shall specify—

- (a) the date and time upon which the correction shall be published, and
- (b) the form, content, extent and manner of publication of the correction,

and shall, unless the plaintiff otherwise requests, require the correction to be published in such manner as will ensure that it is communicated to all or substantially all of those persons to whom the defamatory statement was published.

(3) Where a plaintiff in a defamation action intends to make an application under this section, he or she shall—

- (a) so inform the defendant, by notice in writing, not later than 7 days before the trial of the action, and
- (b) at the trial of the action, so inform the court.

(4) An application under this section may be made at such time during the trial of a defamation action as the court or, where the action is tried in the High Court sitting with a jury, the trial judge directs.

***Damages.***

**29.**—(1) The parties in a defamation action may make submissions to the court in relation to the matter of damages.

(2) In a defamation action brought in the High Court, the judge shall give directions to the jury in relation to the matter of damages.

(3) In making an award of general damages in a defamation action, regard shall be had to all of the circumstances of the case.

(4) Without prejudice to the generality of *subsection (3)*, the court in a defamation action shall, in making an award of general damages, have regard to—

- (a) the nature and gravity of any allegation in the defamatory statement concerned,
- (b) the means of publication of the defamatory statement including the enduring nature of those means,
- (c) the extent to which the defamatory statement was circulated,
- (d) the offering or making of any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement,
- (e) the making of any offer to make amends under *section 20* by the defendant, whether or not the making of that offer was pleaded as a defence,
- (f) the importance to the plaintiff of his or her reputation in the eyes of particular or all recipients of the defamatory statement,
- (g) the extent (if at all) to which the plaintiff caused or contributed to, or acquiesced in, the publication of the defamatory statement,
- (h) evidence given concerning the reputation of the plaintiff,
- (i) if the defence of truth is pleaded and the defendant proves the truth of part but not the whole of the defamatory statement, the extent to which that defence is successfully pleaded in relation to the statement,
- (j) if the defence of qualified privilege is pleaded in accordance with *section 16(2)*, the extent to which the defendant has acceded to the request of the plaintiff to publish a reasonable statement by way of explanation or contradiction, and
- (k) any order made under *section 32*, or any order under that section or correction order that the court proposes to make or, where the action is tried by the High Court sitting with a jury, would propose to make in the event of there being a finding of defamation.

(5) For the purposes of *subsection (4)(c)*, a defamatory statement consisting of words that are innocent on their face, but that are defamatory by reason of facts known to some recipients only of the publication containing the defamatory statement, shall be treated as having been published to those recipients only.

(6) The defendant in a defamation action may for the purposes of mitigating damages—

- (a) give evidence of any matter that would have a bearing upon the reputation of the plaintiff, provided that it relates to matters connected with the defamatory statement,

- (b) give evidence that the plaintiff has already in another defamation action been awarded damages in respect of a defamatory statement that contained substantially the same allegations as are contained in the defamatory statement to which the first-mentioned defamation action relates.

(7) The court in a defamation action may make an award of damages (in this section referred to as “special damages”) to the plaintiff in respect of financial loss suffered by him or her as a result of the injury to his or her reputation caused by the publication of the defamatory statement in respect of which the action was brought.

(8) In this section “court” means, in relation to a defamation action brought in the High Court, the jury, if the High Court is sitting with a jury.

***Aggravated and punitive damages.***

**30.**—(1) Where, in a defamation action—

- (a) the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement, and
- (b) the defendant conducted his or her defence in a manner that aggravated the injury caused to the plaintiff’s reputation by the defamatory statement,

the court may, in addition to any general, special or punitive damages payable by the defendant to the plaintiff, order the defendant to pay to the plaintiff damages (in this section referred to as “aggravated damages”) of such amount as it considers appropriate to compensate the plaintiff for the aggravation of the said injury.

(2) Where, in a defamation action, the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement and it is proved that the defendant—

- (a) intended to publish the defamatory statement concerned to a person other than the plaintiff,
- (b) knew that the defamatory statement would be understood by the said person to refer to the plaintiff, and
- (c) knew that the statement was untrue or in publishing it was reckless as to whether it was true or untrue,

the court may, in addition to any general, special or aggravated damages payable by the defendant to the plaintiff, order the defendant to pay to the plaintiff damages (in this section referred to as “punitive damages”) of such amount as it considers appropriate.

(3) In this section “court” means, in relation to a defamation action brought in the High Court, the jury, if the High Court is sitting with a jury.

***Dismissal for want of prosecution.***

**31.**—(1) Where rules of court provide that the plaintiff in a defamation action is, not later than one year from the bringing of the defamation action, required to do any thing and the plaintiff fails to so do, the defendant may, upon the expiration of that period, apply to the court to have the action dismissed, and the court shall dismiss the action upon such application unless the dismissal of the action would result in injustice being done.

(2) An application under this section shall be brought by motion on notice to the plaintiff.

***Order prohibiting the publication of a defamatory statement.***

**32.**—(1) The High Court, or where a defamation action has been brought, the court in which it was brought, may, upon the application of the plaintiff, make an order prohibiting the publication or further publication of the statement in respect of which the application was made if in its opinion—

- (a) the statement is defamatory, and
- (b) the defendant has no defence to the action that is reasonably likely to succeed.

(2) Where an order is made under this section it shall not operate to prohibit the reporting of the making of that order provided that such reporting does not include the publication of the statement to which the order relates.

(3) In this section “order” means—

- (a) an interim order,
- (b) an interlocutory order, or
- (c) a permanent order.

***Summary disposal of action.***

**33.**—(1) The court in a defamation action may, upon the application of the plaintiff, grant summary relief to the plaintiff if it is satisfied that—

- (a) the statement in respect of which the action was brought is defamatory, and
- (b) the defendant has no defence to the action that is reasonably likely to succeed.

(2) The court in a defamation action may, upon the application of the defendant, dismiss the action if it is satisfied that the statement in respect of which the action was brought is not reasonably capable of being found to have a defamatory meaning.

(3) An application under this section shall be brought by motion on notice to the other party to the action and shall be grounded on an affidavit.

(4) An application under this section shall not be heard or determined in the presence of a jury.

## PART 5

### CRIMINAL LIABILITY

***Abolition of certain common law offences.***

**34.**—The common law offences of criminal libel, seditious libel and obscene libel are abolished.

***Publication of gravely harmful statements.***

**35.**—(1) A person who knowingly, and with the intention of causing grave injury to the reputation of a person (other than a body corporate), publishes or causes to be published a

statement containing false allegations concerning the second-mentioned person, thereby causing grave injury to the reputation of the second-mentioned person, shall be guilty of an offence.

(2) A person who is guilty of an offence under this section shall be liable on conviction on indictment to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 5 years or to both.

(3) *Part 3* shall apply to proceedings for an offence under this section as it applies to a defamation action, and accordingly references in that part to a defamation action shall be construed as references to proceedings for an offence under this section.

(4) Proceedings for an offence under this section shall not be brought unless, not later than one year after the alleged commission of the offence—

- (a) the Director of Public Prosecutions gives his or her consent to the proceedings being brought, or
- (b) the High Court makes an order permitting the bringing of the proceedings.

(5) The District Court may try summarily a person charged with an offence under this section if—

- (a) the court is of opinion that the facts alleged constitute a minor offence fit to be tried summarily,
- (b) the accused, on being informed by the court of his or her right to be tried with a jury, does not object to being tried summarily for the offence, and
- (c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence.

(6) Upon conviction of a person by the District Court of an offence under this section, the person shall be liable to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both.

(7) Where a person is convicted of an offence under this section the court may order that the person—

- (a) shall not publish any statement of such a nature as the court shall specify for such period as the court shall specify concerning the person who was the subject of the false statement to which the offence related,
- (b) shall not communicate with the person referred to in paragraph (a) by any means for such period as the court shall specify, and
- (c) shall, in such manner as the court may specify, publish or cause to be published a statement that the false statement to which the offence related was false and caused grave damage to the reputation of the person referred to in *paragraph (a)*.

***Seizure of copies of false statements.***

**36.**—(1) Where a person is convicted of an offence under section 35, the court may issue a warrant—



- (a) authorising any member of the Garda Síochána to enter (if necessary by the use of reasonable force) at all reasonable times any premises (including a dwelling) at which he or she has reasonable grounds for believing that copies of the statement to which offence related are to be found, and to search those premises and seize and remove all copies of the statement found therein,
- (b) directing the seizure and removal by any member of the Garda Síochána of all copies of the statement to which the offence related that are in the possession of any person,
- (c) specifying the manner in which copies so seized and removed shall be detained and stored by the Garda Síochána.

(2) A member of the Garda Síochána may—

- (a) enter and search any premises,
- (b) seize, remove and detain any copy of a statement to which an offence under *section 35* relates found therein or in the possession of any person,

in accordance with a warrant under *subsection (1)*.

(3) Upon final judgement being given in proceedings for an offence under *section 35*, anything seized and removed under *subsection (2)* shall be disposed of in accordance with such directions as the court may give upon an application by a member of the Garda Síochána in that behalf.

## PART 6

### MISCELLANEOUS

#### ***Limitation of actions***

**37.**—(1) Section 11 of the Act of 1957 is amended—

- (a) in subsection (2), by the substitution of the following paragraph for paragraph (c):

“(c) A defamation action within the meaning of the *Defamation Act 2006* shall not be brought after the expiration of—

- (i) one year, or
- (ii) such longer period as the court may direct not exceeding 2 years,

from the date on which the cause of action accrued.”, and

- (b) the insertion of the following subsections:

“(3A) The court shall not give a direction under subsection (2)(c)(ii) (inserted by *section 37(1)(a)* of the *Defamation Act 2006*) unless it is satisfied that—

- (a) the interests of justice require the giving of the direction,
- (b) the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given,

and the court shall, in deciding whether to give such a direction, have regard to the reason for the failure to bring the action within the period specified in subparagraph (i) of the said subsection (2)(c) and the extent to which any evidence relevant to the matter is by virtue of the delay no longer capable of being adduced.

(3B) For the purposes of bringing a defamation action within the meaning of the *Defamation Act 2006*, the date of accrual of the cause of action shall be the date upon which the defamatory statement is first published and, where the statement is published through the medium of the internet, the date on which it is first capable of being viewed or listened to through that medium.”.

(2) Section 49 of the Act of 1957 is amended by the substitution of the following subsection for subsection (3):

“(3) In the case of defamation actions within the meaning of the *Defamation Act 2006*, subsection (1) of this section shall have effect as if for the words ‘six years’ there were substituted the words ‘one year or such longer period as the court may direct not exceeding two years.’.”.

#### ***Survival of cause of action on death***

**38.**—(1) Section 6 of the Civil Liability Act 1961 is amended by the insertion of the following definitions:

“ ‘Act of 2006’ means the *Defamation Act 2006*;  
‘aggravated damages’ has the same meaning as it has in the Act of 2006;  
‘punitive damages’ has the same meaning as it has in the Act of 2006.”.

(2) Section 7 of the Civil Liability Act 1961 is amended by—

(a) the insertion of the following subsection:

“(1A) On the death of a person on or after the commencement of *section 38(2)(a)* of the Act of 2006, a cause of action for defamation vested in him immediately before his death shall survive for the benefit of his estate.”, and

(b) the insertion of the following subsection:

“(2A) Where by virtue of subsection (1A) of this section, a cause of action for defamation survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate

of that person shall not include general damages, punitive damages or aggravated damages.”.

(3) Section 8 of the Civil Liability Act 1961 is amended by—

(a) the insertion of the following subsection:

“(1A) On the death of a person on or after the commencement of *section 38(3)(a)* of the Act of 2006 a cause of action subsisting against him shall survive against his estate.”,

(b) by the insertion of the following subsection:

“(2A) Where by virtue of subsection (1A) of this section, a cause of action for defamation survives against the estate of a deceased person, the damages recoverable against the estate of that person shall not include general damages, punitive damages or aggravated damages.”.

***Agreements for indemnity.***

**39.**—An agreement to indemnify any person against civil liability for defamation in respect of the publication of any statement shall be lawful unless at the time of the publication that person knows that the statement is defamatory, and does not reasonably believe that there is a defence to any action brought upon it that would succeed.

***Jurisdiction of courts.***

**40.**—The Third Schedule to the Courts (Supplemental Provisions) Act 1961 is amended by—

(a) the insertion, in column (2) at reference number 6, of “a defamation action within the meaning of the Defamation Act 2006,” between “other than” and “an action”, and

(b) the insertion of the following:

“

7A	A defamation action under the <i>Defamation Act 2006</i> .	Where the amount of the claim does not exceed €50,000.	At the election of the plaintiff—  (a) the judge of the circuit where the tort is alleged to have been committed, or  (b) the judge of the circuit where the defendant or one of the defendants resides or carries on business.
----	--	--	---

”.

***Malicious falsehood.***

**41.**—(1) In an action for slander of title, slander of goods or other malicious falsehood, the plaintiff shall be required to prove that the statement upon which the action is founded—

(a) was untrue,

(b) was published maliciously, and

(c) referred to the plaintiff, his or her property or his or her office, profession, calling, trade or business.

(2) In an action for slander of title, slander of goods or other malicious falsehood, the plaintiff shall be required to prove—

(a) special damage, or

(b) that the publication of the statement was calculated to cause and was likely to cause financial loss to the plaintiff in respect of his or her property or his or her office, profession, calling, trade or business.

***Evidence of acquittal or conviction.***

42.—(1) Where a person has been acquitted of an offence in the State, the fact of his or her acquittal, and any findings of fact made during the course of proceedings for the offence concerned, shall be admissible in evidence in a defamation action.

(2) Where a person has been convicted of an offence in the State, the fact of his or her conviction, and any findings of fact made during the course of proceedings for the offence concerned, shall be admissible in evidence in a defamation action.

***Press Council.***

43.—(1) The Minister may by order declare that such body as is specified in the order shall be recognised for the purposes of this Act, and a body standing so recognised, for the time being, shall be known, and in this Act is referred to, as the “Press Council”.

(2) Not more than one body shall stand recognised under this section for the time being.

(3) No body (other than a body that stands recognised under this section for the time being) shall be known as, or describe itself as, the Press Council.

(4) The Minister shall not make an order under *subsection (1)* unless he or she is satisfied that the body in respect of which he or she proposes to make the order complies with the minimum requirements specified in *Schedule 2*.

(5) If the Minister is of the opinion that a body for the time being standing recognised by order under this section no longer complies with the provisions of *Schedule 2*, he or she may revoke that order.

(6) The Minister shall, before making an order under *subsection (5)*, allow the body for the time being standing recognised under this section to make representations to him or her.

(7) Whenever an order is proposed to be made under this section a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

## SCHEDULE 1

### Section 16

#### STATEMENTS HAVING QUALIFIED PRIVILEGE

##### PART 1

##### STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

1. A fair and accurate report of any matter to which the defence of absolute privilege would apply (other than a fair and accurate report referred to in *section 15(2)(i) or (j)*).
2. A fair and accurate report of any proceedings publicly heard before, or decision made public by a court (including a court-martial) established under the law of any state or place (other than the State or Northern Ireland).
3. A fair and accurate report of the proceedings (other than court proceedings) presided over by a judge of a court established under the law of Northern Ireland.
4. A fair and accurate report of any proceedings in public of a house of any legislature (including a subordinate or federal legislature) of any state other than the State.
5. A fair and accurate report of proceedings in public of any body duly appointed, in the State, on the authority of a Minister of the Government, the Government, the Oireachtas, either House of the Oireachtas or a court established under the Constitution to conduct a public inquiry on a matter of public importance.
6. A fair and accurate report of proceedings in public of any body duly appointed, in Northern Ireland, on the authority of a person or body corresponding to a person or body referred to in *paragraph 5* to conduct a public inquiry on a matter of public importance.
7. A fair and accurate report of any proceedings in public of any body -
  - (a) that is part of any legislature (including a subordinate or federal legislature) of any state (other than the State), or
  - (b) duly appointed in a state other than the State, on the authority of a person or body corresponding to a person or body referred to in *paragraph 5*,to conduct a public inquiry on a matter of public importance.
8. A fair and accurate report of any proceedings in public of an international organisation of which the State or Government is a member or the proceedings of which are of interest to the State.
9. A fair and accurate report of any proceedings in public of any international conference to which the Government sends a representative or observer or at which governments of states (other than the State) are represented.

10. A fair and accurate copy or extract from any register kept in pursuance of any law which is open to inspection by the public or of any other document which is required by law to be open to inspection by the public.
11. A fair and accurate report, copy or summary of any notice or advertisement published by or on the authority of any court established by law in the State or under the law of a Member State of the European Union, or any judge or officer of such a court.
12. A fair and accurate report or copy or summary of any notice or other document issued for the information of the public by or on behalf of any Department of State for which a Minister of the Government is responsible, local authority or the Commissioner of the Garda Síochána, or by or on behalf of a corresponding department, authority or officer in a Member State of the European Union.
13. A fair and accurate report or copy or summary of any notice or document issued by or on the authority of a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas.
14. A determination of the Press Ombudsman referred to in *paragraph 9(2) of Schedule 2*.
15. A determination of the Press Council referred to in *paragraph 9(4) of Schedule 2* or a report of the Press Council relating to the past performance of its functions.
16. Any statement published pursuant to, and in accordance with, a determination of the Press Ombudsman or the Press Council.
17. Any statement made during the investigation or hearing of a complaint by the Press Ombudsman in accordance with *Schedule 2*.
18. Any statement made during the hearing of an appeal from a determination of the Press Ombudsman in accordance with *Schedule 2*.

## PART 2

### STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

1. A fair and accurate report of the proceedings, findings or decisions of an association, or a committee or governing body of an association, whether incorporated or not in the State or in a Member State of the European Union, relating to a member of the association or to a person subject, by contract or otherwise, to control by the association.
2. A fair and accurate report of the proceedings at any public meeting, held in the State or in a Member State of the European Union, being a meeting held for a lawful purpose and for the discussion of any matter of public concern whether the admission to the meeting is general or restricted.
3. A fair and accurate report of the proceedings at a general meeting, whether in the State or in a Member State of the European Union, of any company or association established by or under statute or incorporated by charter.

4. A fair and accurate report of the proceedings at any meeting or sitting of any local authority or the Health Service Executive, and any corresponding body in a Member State of the European Union.
5. A fair and accurate report of a press conference convened by or on behalf of a body to which this Part applies or the organisers of a public meeting within the meaning of *paragraph 2* to give an account to the public of the proceedings or meeting.
6. A fair and accurate report of a report to which the defence of qualified privilege would apply.
7. A copy or fair and accurate report or summary of any ruling, direction, report, investigation, statement (including any advice, admonition or censure given or administered by the Irish Takeover Panel under section 20 of the Irish Takeover Panel Act 1997) or notice made, given, prepared, published or served by the Irish Takeover Panel.

## SCHEDULE 2

### *Section 43*

#### MINIMUM REQUIREMENTS IN RELATION TO PRESS COUNCIL

1. The Press Council shall be a company limited by guarantee.
2. The principal objects of the Press Council shall be to -
  - (a) ensure the protection of freedom of expression of the press,
  - (b) protect the public interest by ensuring ethical, accurate and truthful reporting by the press,
  - (c) maintain certain minimum ethical and professional standards among the press,
  - (d) ensure that the privacy and dignity of the individual is protected.
3. The Press Council shall be independent in the performance of its functions.
4. The owner of any periodical in circulation in the State or part of the State shall be entitled to be a member of the Press Council.
5. (1) The number of directors of the Press Council shall be 13, of whom -
  - (a) 7 shall be directors (in this Schedule referred to as “independent public interest directors”) who represent the public interest,
  - (b) 5 shall be directors who represent the interests of owners and publishers of periodicals,
  - (c) one shall be a director who represents the interests of journalists.
- (2) One of the independent public interest directors of the Press Council shall be appointed as chairperson of the Press Council.

6. (1) The independent public interest directors shall -
- (a) be persons who are of standing in the community;
  - (b) be persons who are independent of -
    - (i) the interests of owners and publishers of periodicals, and
    - (ii) the interests of journalists; and
  - (c) be selected for appointment as independent public interest directors -
    - (i) by a panel of persons who are, in the opinion of the Minister, independent of the interests referred to in *paragraph 5(1)(b)* and *(c)*,
    - (ii) in accordance with a selection process that is advertised to members of the public in a manner that the Minister considers to be sufficient.
- (2) The criteria for selecting persons for appointment as independent public interest directors shall be published in such manner as will enable them to be inspected by members of the public.
7. (1) The Press Council shall be funded from subscriptions paid by members of the Press Council calculated in accordance with such rules as the Press Council shall make for that purpose.
- (2) The Press Council shall not accept gifts or funding from any person other than subscriptions referred to in *subparagraph (1)*.
8. (1) The Press Council shall have authority to receive, hear and determine complaints concerning the conduct of its members.
- (2) The Press Council shall appoint a person (in this Act referred to as the “Press Ombudsman”) to investigate, hear and determine complaints made to the Press Council concerning the conduct of its members.
9. (1) The procedures for investigating, hearing and determining a complaint to the Press Ombudsman shall -
- (a) where appropriate, provide for the expeditious and informal resolution of the matter between the complainant and the member of the Press Council in respect of whom the complaint was made,
  - (b) provide for the determination of the matter by the Press Ombudsman, where all reasonable efforts made in accordance with *clause (a)* in relation to the matter have failed,
  - (c) provide for the taking of remedial action by the member of the Press Council in respect of whom the complaint was made consisting of any or all of the following:
    - (i) the publication of the decision of the Press Ombudsman by such members of the Press Council as he or she directs and in such form and manner as he or she directs,



- (ii) the publication of a correction of inaccurate facts or information relating to the complainant in a manner that gives due prominence to the correction in the publication concerned,
- (iii) the publication of a retraction in respect of the material complained of, or
- (iv) such other action as the Ombudsman may, in the circumstances, deem appropriate.

(2) A determination of the Press Ombudsman in relation to a complaint may be appealed to the Press Council.

(3) Where an appeal is brought against the determination of the Press Ombudsman it shall be determined by the directors of the Press Council.

(4) A determination of the Press Council, upon an appeal from a determination of the Press Ombudsman, shall be published by such members of the Press Council as the directors of the Press Council direct and in such form and manner as they direct.

10. The Press Council shall adopt a code of standards which shall specify the standards to be adhered to, and the rules and practices to be complied with by the members of the Press Council including -

- (a) ethical standards and practices,
- (b) rules and standards intended to ensure the accuracy of reporting where a person's reputation is likely to be affected, and
- (c) rules and standards intended to ensure that intimidation and harassment of persons does not occur and that the privacy, integrity and dignity of the person is respected.